

COGENT COMMUNICATIONS GROUP INC
Form PRE 14C
June 20, 2003

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SCHEDULE 14C INFORMATION

**Information Statement Pursuant to Section 14(c) of
the Securities Exchange Act of 1934**

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for use of the Commission only (as permitted by Rule 14c-5(d)(2))**
- Definitive Information Statement

COGENT COMMUNICATIONS GROUP, INC.
(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4)

Date Filed:

**1015 31st Street N.W.
Washington, D.C. 20007
(202) 295-4200**

INFORMATION STATEMENT

This Information Statement is being furnished to the stockholders of Cogent Communications Group, Inc., a Delaware corporation (the "Company") in connection with (1) the proposed amendment and restatement of the Company's Third Amended and Restated Certificate of Incorporation (2) the proposed exchange of certain outstanding debt and sale of certain participating convertible preferred stock of the Company and (3) the adoption by the Company of an equity compensation plan. These proposals are described in more detail in this Information Statement. This Information Statement will be first mailed to stockholders on or about June 30, 2003.

**WE ARE NOT ASKING YOU FOR A PROXY AND
YOU ARE REQUESTED NOT TO SEND A PROXY.**

Consent Date; Outstanding Shares; Voting Rights

It is anticipated that on June 20, 2003 (the "Consent Date"), certain of the Company's stockholders will act by written consent to approve the proposals described in this Information Statement. It is anticipated that on the Consent Date, the Company's issued and outstanding capital stock will consist of:

3,524,848 shares of common stock, par value \$.001 per share (the "Common Stock"), which was held by approximately 342 holders of record;

26,000,000 shares of Series A Participating Convertible Preferred Stock, par value \$.001 per share (the "Series A Preferred Stock");

19,370,223 shares of Series B Participating Convertible Preferred Stock, par value \$.001 per share (the "Series B Preferred Stock");

49,773,402 shares of Series C Participating Convertible Preferred Stock, par value \$.001 per share (the "Series C Preferred Stock");

3,426,293 shares of Series D Participating Convertible Preferred Stock, par value \$.001 per share (the "Series D Preferred Stock"); and

3,426,293 shares of Series E Participating Convertible Preferred Stock, par value \$.001 per share (the "Series E Preferred Stock" and together with the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, the "Existing Preferred Stock").

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Holders of shares of our Common Stock and Existing Preferred Stock are entitled to the following number of votes on all matters on which they are entitled to a vote:

holders of Common Stock are entitled to one vote for each share held;

holders of Series A Preferred Stock are entitled to one vote for every ten shares held;

holders of Series B Preferred Stock are entitled to one vote for every 7.7046 shares held;

holders of Series C Preferred Stock are entitled to one vote for every ten shares held;

holders of Series D Preferred Stock are entitled to one vote for every ten shares held; and

holders of Series E Preferred Stock are entitled to one vote for every ten shares held.

Dissenters' Rights of Appraisal

Under the laws of the State of Delaware and the Company's governing documents, stockholders will not have the right to dissent and obtain payment for their shares in connection with the proposals described in this Information Statement.

Note Regarding Share and Per Share Data

In connection with the completion of the merger of Allied Riser Communications Corporation ("Allied Riser") with a subsidiary of the Company, which is discussed in the footnotes to the financial statements accompanying this Information Statement, the Company completed a ten-for-one reverse stock split with respect to its common stock. All share and per-share information contained in and accompanying this Information Statement reflects the occurrence of that reverse stock split.

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PROPOSAL NO. 1 AMENDMENT AND RESTATEMENT OF THE COMPANY'S CERTIFICATE OF INCORPORATION

On June 12, 2003, the Board of Directors unanimously adopted, subject to stockholder approval, the Fourth Amended and Restated Certificate of Incorporation of the Company, a copy of which is attached hereto as Appendix A (the "Amended and Restated Charter"). It is anticipated that on or about June 20, 2003, stockholders holding capital stock of the Company representing a number of votes sufficient to approve the proposal will consent to approve the adoption of the Amended and Restated Charter.

The Amended and Restated Charter will:

increase the number of authorized shares of the Company's Common Stock from 21,100,000 shares to 395,000,000 shares by authorizing 373,900,000 additional shares of authorized but unissued common stock;

eliminate reference to the Existing Preferred Stock that will be converted into Common Stock and retired as described below; and

authorize 120,000 shares of authorized but unissued and undesignated preferred stock (the "Undesignated Preferred Stock").

The Amended and Restated Charter will become effective upon filing of the Amended and Restated Charter with the Secretary of State of the State of Delaware. Immediately after the Amended and Restated Charter becomes effective, the Company intends to designate the Undesignated Preferred Stock into several new series of preferred stock and issue such shares as described in Proposals No. 2 and No. 3 below.

PROPOSAL NO. 2
APPROVAL OF CISCO EXCHANGE TRANSACTION AND PRIVATE SALE OF PREFERRED STOCK

On June 12, 2003, the Board of Directors unanimously adopted a resolution, subject to stockholder approval, authorizing the Company to consummate a transaction with Cisco Systems, Inc. ("Cisco") and Cisco Systems Capital Corporation ("Cisco Capital") that would restructure the indebtedness of the Company owed to Cisco Capital on the terms set forth below as well as to offer and sell a new series of preferred stock to certain of the Company's existing stockholders in order to acquire the cash needed to complete the restructuring. It is anticipated that on or about June 20, 2003, stockholders holding capital stock of the Company representing a number of votes sufficient to do so, will approve this transaction. To effect this transaction, the Company will enter into:

An agreement with Cisco and Cisco Capital pursuant to which, among other things, Cisco and Cisco Capital will agree to cancel approximately \$262.8 million in principal amount of indebtedness plus accrued interest owed by the Company to Cisco Capital and return warrants exercisable for the purchase of 710,216 shares of Common Stock (the "Cisco Warrants") in exchange for a cash payment by the Company of \$20 million, 11,000 shares of the Company's Series F Participating Convertible Preferred Stock, par value \$.001 per share (the "Series F Preferred Stock"), the terms of which are described below, and an amended and restated promissory note issued by the Company for the aggregate principal amount of \$17 million the terms of which will be governed by the amended and restated credit agreement with Cisco Capital described below (the "Amended and Restated Credit Agreement"). This agreement is referred to as the "Exchange Agreement."

An agreement with certain of the Company's existing preferred stockholders (the "Investors"), pursuant to which the Company will agree to issue and sell to certain of the Investors in several

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subseries, shares of the Company's Series G Participating Convertible Preferred Stock, par value \$.001 (the "Investors Preferred"), the terms of which are described below. This agreement is referred to as the "Purchase Agreement."

A number of ancillary agreements related to the transactions contemplated by the Exchange Agreement and Purchase Agreement including a general release among and between the Company and its subsidiaries, Cisco, Cisco Capital and the Investors pursuant to which Cisco and Cisco Capital will release the Company and its subsidiaries and the Investors and the Company and its subsidiaries will release Cisco and Cisco Capital from all liability associated with the existing credit facility and Service Provider Agreement, and an Escrow Agreement among and between the Company, Cisco, Cisco Capital, the Investors and SunTrust Bank pursuant to which the parties will deposit all of the cash, securities and other documents to be delivered pursuant to the Exchange Agreement and Purchase Agreement, other than the preferred stock, in order to facilitate the closing of the transactions contemplated by such agreements.

Background

Default under the Cisco Credit Facility and Debt Restructuring

In October 2001, the Company entered into a \$409 million credit facility with Cisco Capital. This credit facility replaced an existing \$310 million credit facility with Cisco Capital. The credit facility provided for the financing of purchases of up to \$270 million of Cisco network equipment, software and related services, the funding of up to \$64 million of working capital, and up to \$75 million of interest and fees related to the credit facility. The credit facility with Cisco Capital also required compliance with certain financial and operational covenants. The Company failed to meet the covenants related to minimum net revenues for the fourth quarter of 2002, minimum net revenues for the first quarter of 2003 and minimum cash reserves for March 31, 2003. Accordingly, the Company was in default under the credit facility, and Cisco Capital could have accelerated the loan payments and required the Company to immediately repay approximately \$262.8 million of the Company's borrowings under the credit facility. Our cash and short-term investments were approximately \$17.1 million at March 31, 2003, which is substantially less than the amount outstanding under the credit facility. Accordingly, such acceleration would likely have forced the Company to file for bankruptcy protection.

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In order to avoid such an outcome, the Company began to negotiate with Cisco Capital early in the first quarter of 2003 with the goal of restructuring the credit facility. During the course of these negotiations, the Company also began to explore its options for obtaining additional equity financing as it became apparent that any restructuring of the Cisco credit facility would require an infusion of additional cash through an equity financing. The Company was unsuccessful at obtaining equity financing from third parties, the Company began discussions with its existing investors regarding an equity financing at the same time that it was negotiating with Cisco regarding a restructuring of the credit facility. Early in the second quarter of 2003, the Company and Cisco reached tentative agreement on the terms of the restructuring with the Company agreeing to make a cash payment to Cisco Capital and issue to Cisco Capital shares of the Company's preferred stock. In return, Cisco Capital would substantially reduce the amount of the Company's debt and return Common Stock warrants to the Company. Ultimately the terms agreed to were for the Company to make a \$20 million cash payment to Cisco Capital and issue to Cisco Capital 11,000 shares of Series F Preferred Stock. The Company's indebtedness to Cisco Capital would then be reduced to \$17 million. At this point, the Company also began to discuss the terms of an equity financing with its existing investors.

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Sale of Preferred Stock and Offering to Other Stockholders

In order to raise the capital necessary to make the \$20 million payment to Cisco Capital, the Company has also entered into the Purchase Agreement with the Investors. Pursuant to the Purchase Agreement, the Company will issue 41,000 shares of Investors Preferred in several series to the Investors for an aggregate cash payment of \$41 million. The Company has also commenced an offering to certain other holders of its Existing Preferred Stock that the Company has identified as accredited investors to sell additional shares of Investors Preferred on same terms and conditions (except with respect to the closing of the transaction) as are set forth in the Purchase Agreement (that transaction is referred to as the "Secondary Offering"). The Company Anticipates that the Secondary Offering will remain open until approximately July 20, 2003. Only those stockholders of the Company that have already been identified as accredited investors and contacted by the Company with respect to the Secondary Offering will be permitted to participate in the Secondary Offering. To participate in the Secondary Offering, an offeree must commit to purchase a minimum number of shares of Investors Preferred as determined by reference to the offeree's current ownership in the Company. The Investors Preferred, will be issued in several series each of which will have identical rights and preferences except with respect to rights upon conversion which will be determined by reference to each purchaser's accrued liquidation preference in the Existing Preferred Stock that they hold.

Conversion of Existing Preferred Stock

Immediately prior the closing of the transactions contemplated by the Exchange Agreement and the Purchase Agreement and the filing of the Amended and Restated Charter with the Secretary of State of the State of Delaware, all of the outstanding shares of Existing Preferred Stock will be automatically converted into shares of Common Stock. The Company anticipates that on or about June 20, 2003, the holders of a sufficient number of shares of the Existing Preferred Stock to effect such a conversion, will vote to do so.

Terms of the Investors Preferred, Series F Preferred Stock and Series H Preferred Stock

Immediately prior to the closing of the restructuring, certificates of designation in the forms attached hereto as Appendices B, C and D setting forth the rights and preferences of the Investors Preferred, Series F Preferred Stock and the Company's Series H Participating Convertible Preferred Stock, par value \$.001 per share (the "Series H Preferred Stock") will be approved by the Board of Directors and will be filed with the Secretary of State of Delaware. A summary of certain of the rights and preferences of the Investors Preferred, Series F Preferred Stock and Series H Convertible Preferred Stock is set forth below. The complete designation of the rights and preferences of the Investors Preferred, Series F Preferred Stock and Series H Preferred Stock is set forth in the Amended and Restated Charter and in the certificates of designation in the forms attached hereto as Appendices B, C and D.

Dividends

The holders of the Investors Preferred, Series F Preferred Stock and Series H Preferred Stock will be entitled to receive out of legally available funds, dividends (on an as-converted-to-Common-Stock basis) payable when and if dividends are declared by the Board of Directors with respect to the Common Stock.

Conversion

Each share of the Investors Preferred, Series F Preferred Stock and Series H Preferred Stock may be converted into shares of Common Stock at the election of its holder at any time. Each share of Series F Preferred Stock will be automatically converted into shares of Common Stock upon the

affirmative election of the holders of at least one half of the outstanding shares of the Series F Preferred Stock. Each share of Investors Preferred Stock will be automatically converted into shares of Common Stock upon the affirmative election of the holders of at least two thirds of the outstanding shares of the Investors Preferred Stock. Each share of Series H Preferred Stock will be automatically converted into shares of Common Stock upon the affirmative election of the holders of at least two thirds of the outstanding shares of the Series H Preferred Stock. The Series F Preferred Stock will convert into an aggregate number of shares representing 18.06% of the fully diluted authorized and outstanding shares of Common Stock after the completion of the restructuring (assuming conversion of all of the Company's issued and outstanding securities that are convertible into Common Stock and exercise of all outstanding options and warrants or any other rights to purchase or acquire other equity interests in the Company). The Investors Preferred will be convertible into an aggregate number of shares representing 66.47% of the fully diluted authorized and outstanding shares of Common Stock after the completion of the restructuring (assuming conversion of all of the Company's issued and outstanding securities that are convertible into Common Stock and exercise of all outstanding options and warrants or any other rights to purchase or acquire other equity interests in the Company). The Series H Preferred Stock will be convertible into an aggregate number of shares representing 11.00% of the fully diluted authorized and outstanding shares of Common Stock after completion of the transaction (assuming conversion of all of the Company's issued and outstanding securities that are convertible into Common Stock and exercise of all outstanding options and warrants or any other rights to purchase or acquire other equity interests in the Company). The conversion price will be subject to adjustment as provided in the paragraph below (relating to antidilution). The Investors Preferred, Series F Preferred Stock and Series H Preferred Stock will be automatically converted into Common Stock, at the then applicable conversion rate in the event of an underwritten public offering of shares of the Company at a total offering of not less than \$50 million at a post-money valuation of the Company of \$500 million (a "Qualifying PO").

Antidilution

The conversion price of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will be subject to adjustment to reduce dilution in the event that the Company issues additional equity securities (other than shares issued pursuant to the Company's equity compensation plan and other customary exclusions) at a purchase price less than the applicable conversion price. In the event of such an issuance of additional securities, the applicable conversion price will be adjusted on a weighted average basis taking into account the price and number of the newly issued shares and the number of shares then outstanding. The conversion price will also be subject to proportional adjustment for stock splits, stock dividends, recapitalizations and the like. In addition, the conversion price of the Series F Preferred Stock will be subject to adjustment to prevent the Series F Preferred Stock from becoming convertible into less than 5% of the fully diluted authorized and outstanding shares of Common Stock after completion of an additional issuance of securities at a price less than the current conversion price. In addition, if there is an adjustment to the conversion price of the Series F Preferred Stock, the Investors Preferred Stock, or the Series H Preferred Stock, then all such series of Preferred Stock will receive the same proportional adjustment.

Voting Rights and Protective Provisions

The Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will vote together with the Common Stock and not as a separate class, except as required by law with respect to any amendment or waiver of any provisions of the Company's Amended and Restated Charter or Bylaws that adversely affects the rights, preferences and privileges of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock, on all matters except the election of directors on which the holders of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will have no vote with respect to their shares of Series F Preferred Stock, Investors Preferred and Series H

Preferred Stock. Each share of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will have a number of votes equal to the number of shares of Common Stock then issuable upon conversion of such share of Series F Preferred Stock, Investors Preferred or Series H Preferred Stock. In addition and subject to customary exceptions, the consent of holders of a majority of the outstanding Series F Preferred Stock will be required to declare or pay any dividend on the common or the preferred stock of the Company, and the consent of the holders of 80% of the Investors Preferred will be required prior to an underwritten public offering of the Company's stock unless the aggregate pre-money valuation of the Company at the time of the offering is at least \$500 million, and the gross cash proceeds of the offering are \$50,000,000.

Liquidation Preference; Participation

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Upon any dissolution, liquidation, or winding up of the Company, the holders of outstanding shares of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will be entitled to receive, out of the assets of the Company remaining after all of the Company's debts and liabilities have been paid or otherwise provided for but before any payments have been made to the holders of Common Stock, an amount payable in cash equal to and with the preferences as follows: (1) the holders of the Series F Preferred Stock and Investors Preferred will be entitled to an aggregate of \$52 million; (2) the holders of the Investors Preferred and Series H Preferred Stock will be entitled to an aggregate of \$91.11 million; and (3) the holders of the Series F Preferred Stock will be distributed an amount so that in the aggregate they will have received through the first three tranches of liquidation payments an amount equal to \$29.12 million. If the assets available for distribution are other than cash, for example, the stock of an acquiring company paid in an acquisition of the Company, such other assets will be distributed instead of cash. After payment of all the amounts above, the Series F Preferred Stock, Investors Preferred Stock, and Series H Preferred Stock will participate on an as-converted-to-Common-Stock basis with the holders of Common Stock. A merger, reorganization or other acquisition-type transaction in which control of the Company or all or substantially all of its assets is transferred will be treated as a liquidation.

Redemption

The Series F Preferred Stock, Investors Preferred and Series H Preferred Stock will not be redeemable.

Registration Rights Agreement and Stockholder Agreement

The holders of the Series F Preferred Stock and Investors Preferred will enter into a Third Amended and Restated Registration Rights Agreement with the Company and certain other holders of the Existing Preferred Stock, which will provide for, among other things, registration rights with respect to common stock issued to the parties to the agreement. The holders of the Series F Preferred Stock and Investors Preferred will enter into a Second Amended and Restated Stockholders Agreement, which will provide for, among other things, an agreement by these parties to vote shares of Common Stock held by them for directors of the Company so as to elect as directors of the Company persons designated by certain of the parties to such agreement as well as the right to participate on a proportional basis in any future equity offerings by the Company.

Dilutive Effect on Holders of Common Stock

Upon the issuance of the Series F Preferred Stock, Investors Preferred Stock and assuming issuance of all of the Series H Preferred Stock authorized for issuance under the Company's 2003 Incentive Award Plan (as described in Proposal No. 3), the equity interests of our existing common

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stockholders and preferred stockholders, as a percentage of the total number of shares of the Company's Common Stock assuming conversion of the Preferred Stock, will be substantially diluted.

Percentage of Outstanding Common Stock Owned (Assuming Conversion of Preferred Stock)

Holder	Before Issuance of Additional Preferred Stock	After Issuance of Series F Preferred Stock and Investors Preferred Stock	After Issuance of Series F Preferred Stock and Investors Preferred Stock and Assuming Issuance of all Series H Preferred Stock
Existing Common Stockholders	24.3%	0.6%	0.6%
Existing Preferred Stock holders	75.7%	3.2%(1)	2.8%(2)
Series F Preferred Stock and Investors Preferred Stock and Series H Preferred Stock holders	0.00%	96.2%	96.6%

(1)

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This figure includes 0.5% of the outstanding Common Stock owned by persons not participating in the Secondary Offering.

(2)

This figure includes 0.4% of the outstanding Common Stock owned by persons not participating in the Secondary Offering.

Additionally, as a result of the issuance of the Series F Preferred Stock, Investors Preferred and Series H Preferred Stock, in the event of any dissolution, liquidation, or winding up of the Company, at least \$29.1 million will be paid in cash to the holders of the Series F Preferred Stock, at least \$123.0 million will be paid in cash to the holders of the Investors Preferred and at least \$9.1 million will be paid in cash to the holders of the Series H Preferred Stock before any payment is made to the holders of Common Stock.

Amended and Restated Credit Agreement, Amended and Restated Cisco Note and Service Provider Agreement

In connection with the transactions contemplated by the Exchange Agreement the Company's will enter into the Amended and Restated Credit Agreement with Cisco Capital pursuant to which the Company's indebtedness to Cisco will be reduced to \$17 million and Cisco Capital's obligation to make additional loans to the Company will be terminated. Additionally the Amended and Restated Credit Agreement will eliminate covenants related to the Company's financial performance. Cisco Capital will retain its senior security interest in substantially all of the Company's assets except that the Company will be permitted to subordinate Cisco Capital's security interest in the Company's accounts receivable for the purpose of obtaining financing secured by such accounts receivable.

The \$17 million in debt to Cisco Capital will be evidenced by amending and restating the note issued under the current Credit Agreement (the "Amended and Restated Cisco Note") that is to be repaid in three installments. Unless the Company defaults under the terms of the Amended and Restated Credit Agreement, no interest is payable on the note for the first 30 months after its issuance at which time a \$7 million principal payment is due. An additional \$5 million principal payment plus interest accrued thereon during the preceding 12 months is due 42 months after the closing of the restructuring, and a final principal payment of \$5 million plus interest accrued thereon during the preceding 12 months is due 54 months after the closing of the restructuring. The applicable annual interest rate accruing in respect of these payments is 90-day LIBOR plus 4.5%.

The Amended and Restated Cisco Note will be subject to mandatory prepayment in full, without prepayment penalty, upon the occurrence of any of the following events: (1) the closing of any liquidity event as described below, (2) the completion of any equity financing yielding gross proceeds, or the receipt of loan proceeds, in an aggregate amount of at least \$30 million, (3) the achievement by the Company of four consecutive quarters of operating cash flow of a minimum of \$5 million per quarter (subject to certain adjustments), or (4) the merger of the Company resulting in a combined entity with an equity value greater than \$100 million. As used in the Amended and Restated Credit Agreement,

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"liquidity event" means the sale of all or substantially all of the assets of the Company, any change in the composition of the shareholders of the Company that would result in any person or entity (or group of persons or entities acting in concert), acquiring in excess of 50% of the voting rights in the Company, or any person or entity (or group of persons or entities) otherwise acquiring the power to direct the management or affairs of the Company by obtaining proxies, entering into voting trusts, acquiring securities or otherwise. The debt is subject to partial mandatory prepayment in an amount equal to the lesser of \$2 million or the amount raised if the Company raises less than \$30 million in a future equity financing.

In connection with the Exchange Agreement and the Amended and Restated Credit Agreement, the Service Provider Agreement, under which the Company purchases equipment from Cisco will be terminated. This will relieve the Company of its purchase obligations under the agreement. The Company will enter into a new Service Provider Letter Agreement with Cisco permitting the Company to make purchases of Cisco equipment but neither Cisco nor Cisco Capital will not provide financing for such equipment.

PROPOSAL 3

APPROVAL OF THE 2003 INCENTIVE AWARD PLAN OF COGENT COMMUNICATIONS GROUP, INC.

On June 12, 2003, the Compensation Committee (the "Committee") of the board of directors adopted, subject to stockholder approval, the 2003 Incentive Award Plan (the "Award Plan"). The Company believes that adoption of the Award Plan is needed to permit the Company to continue to incentivize its employees, consultants, and directors by granting restricted stock awards as part of their overall compensation. It is anticipated that on or about June 20, 2003, stockholders holding capital stock of the Company representing a number of votes sufficient to approve the Award Plan and the reservation of 54,001 shares of Series H Preferred Stock for issuance thereunder will approve the Award Plan.

Description Of The Award Plan

General

The purpose of the Award Plan is to provide an additional incentive for the Company's employees and consultants to further the growth, development and financial success of the Company by personally benefiting through the ownership of Company stock and to enable the Company to obtain and retain the services of employees and consultants considered essential to the long range success of the Company by offering them an opportunity to own stock in the Company.

Administration.

The Committee has the authority to conduct the general administration of the Award Plan. Under the terms of the Award Plan, the Committee consists of two or more non-employee directors, appointed by the board of directors, each of whom must be both a "non-employee director" as defined by Rule 16b-3 under the Securities Exchange Act of 1934, as amended ("Rule 16b-3") and an "outside director" for purposes of Section 162(m) of the Code. The Committee has the power to interpret the Award Plan and any award agreement entered into under the Award Plan, as well as to adopt, amend, and rescind rules for the administration, interpretation, and application of the Award Plan. In addition, the board of directors, in its absolute discretion, may at any time, and from time to time, exercise any and all rights and duties of the Committee under the Award Plan, except with respect to matters which under Rule 16b-3 or Section 162(m) of the Code are required to be determined in the sole discretion of the Committee.

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Eligibility.

The Committee, in its sole discretion, may from time to time grant awards to any number of key employees or consultants of the Company (or any subsidiary of the Company). The Committee determines at the time of each grant the number of shares subject to such award.

Number of Shares.

Up to 54,001 shares of Series H Preferred Stock may be granted as restricted stock awards under the Award Plan. Restricted shares that have been surrendered to the Company may be granted again by the Company under the Award Plan.

Payment for Shares.

The purchase price for all restricted stock awards, together with any applicable tax required to be withheld, must be paid in full in cash at the time of purchase or may.

Merger, Consolidation, and Other Events.

The Award Plan provides the Committee or the board of directors discretion to amend the terms of outstanding restricted stock and future awards that may be made under the Award Plan upon the occurrence of a recapitalization, stock split, reorganization, merger, consolidation, liquidation, dissolution, or sale, transfer, exchange, or other disposition of all or substantially all of the assets of the Company or other similar corporate event.

The foregoing is only a summary of the Award Plan and is qualified in its entirety by reference to its full text, a copy of which is attached hereto as Appendix E.

VOTE REQUIRED

The affirmative vote of the holders of two-thirds of the shares of Common Stock and Existing Preferred Stock (on an as-converted-to-Common-Stock-basis) voting as a single class, and of two-thirds of the shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting as a single class is required to approve the adoption of the Amended and Restated Charter, to approve the transactions contemplated by the Exchange Agreement and the Purchase Agreement and the adoption of the Award Plan. It is anticipated that on June 20, 2003, Stockholders holding the requisite amount of capital stock of the Company will have acted by written consent to approve the adoption of the Amended and Restated Charter, the transactions contemplated by the Exchange Agreement and the Purchase

Agreement, and the adoption of the Award Plan.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information with respect to the beneficial ownership of shares of the Company's capital stock (1) as of May 31, 2003, assuming conversion of all of the outstanding Existing Preferred Stock of the Company into Common Stock at their then effective conversion rates and (2) after the issuance of the Series F Preferred Stock and the Investors Preferred Stock assuming conversion of all of the Existing Preferred Stock, Series F Preferred Stock and the Investors Preferred Stock into Common Stock at their then effective conversion rates, by:

each stockholder known to us to be a beneficial owner of more than 5% of any class of voting capital stock;

each of our directors;

each of our named executive officers; and

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all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares subject to options, warrants and securities convertible into common stock held by that person that are exercisable as of May 31, 2003 or exercisable within 60 days thereof are deemed beneficially owned. Except as indicated in the footnotes to this table, we believe that each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder's name, except to the extent shared by a spouse under applicable law. This table is based on information supplied by officers, directors and principal stockholders. As of May 31, 2003, assuming conversion of all of the outstanding preferred stock of the Company into common stock at their then effective conversion rates, there would have been 14,300,573 shares of common stock outstanding. After the issuance of the Series F Preferred Stock and the Investors Preferred Stock, assuming conversion of all of the outstanding preferred stock of the Company into common stock at their then effective conversion rates, there will be 337,447,975 shares of common stock outstanding.

Unless otherwise noted, the address for each stockholder below is: c/o Cogent Communications Group, Inc., 1015 31st Street, N.W., Washington D.C. 20007.

Name and Address	Number of Shares	Percent Ownership as of May 31, 2003	Number of Shares after issuance of Series F Preferred Stock, Investors Preferred Stock	Percent Ownership after issuance of Series F Preferred Stock and Investors Preferred Stock
Entities affiliated with Jerusalem Venture Partners Building One Mahla, Jerusalem 91487	2,957,125	20.68	80,091,322	23.73
Entities affiliated with Worldview Technology Partners 435 Tasso Street, #120 Palo Alto, CA 94301	2,315,431	16.19	59,963,367	17.77
Entities affiliated with Oak Investment Partners IX, LP One Gorham Island Westport, CT 06880	2,028,850	14.19	60,762,677	18.01
	878,635	6.14	33,094,332	9.81

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Name and Address	Number of Shares	Percent Ownership as of May 31, 2003	Number of Shares after issuance of Series F Preferred Stock, Investors Preferred Stock	Percent Ownership after issuance of Series F Preferred Stock and Investors Preferred Stock
Entities affiliated with Broadview Capital Partners One Bridge Plaza Fort Lee, NJ 07024				
Cisco Systems Capital Corporation	710,216(1)	4.97	68,199,901(2)	20.21
David Schaeffer (3)	1,838,759	12.58	5,766,249	1.71
H. Helen Lee (4)	108,275	*	108,275	*
Erel Margalit	2,957,125(5)	20.68	80,091,322(6)	23.73
James Wei	2,315,431(7)	16.19	59,963,367(8)	17.77
Edward Glassmeyer	2,028,850(9)	14.19	60,762,677(10)	18.01
Mark Schleifer (11)	14,280	*	14,280	*
Robert Beury (12)	15,078	*	15,078	*
Directors and executive officers as a group (11 persons) (13)	9,331,439	63.04	206,774,889	61.18

*

Less than 1%

- (1) Constitutes the number of shares of Common Stock subject to the warrants issued to Cisco Capital in connection with the Company's credit facility.

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- (2) Reflects cancellation of warrants referred to in note (1).
- (3) Includes 135,000 shares of common stock held by the Schaeffer Descendant's Trust. Mr. Schaeffer disclaims beneficial ownership of such shares. Includes 318,335 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of May 31, 2003.
- (4) Includes 104,142 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of May 31, 2003.
- (5) Includes 2,957,125 shares held by entities affiliated with Jerusalem Venture Partners, of which Mr. Margalit is Managing General Partner, including: (a) JVP III, LP, (b) JVP III (Israel) LP, (c) JVP Entrepreneurs Fund LP, (d) JVP IV, LP, (e) JVP-IV-A LP, and (f) JVP IV (Israel) LP. Mr. Margalit disclaims beneficial ownership of such shares.
- (6) Includes 80,091,322 shares held by entities affiliated with Jerusalem Venture Partners, of which Mr. Margalit is Managing General Partner, including: (a) JVP III, LP, (b) JVP III (Israel) LP, (c) JVP Entrepreneurs Fund LP, (d) JVP IV, LP, (e) JVP-IV-A LP, (f) JVP IV (Israel) LP, and (g) JVP Entrepreneurs Fund IV, LP. Mr. Margalit disclaims beneficial ownership of such shares.
- (7) Includes 2,315,431 shares held by entities affiliated with Worldview Technology Partners, of which Mr. Wei is a general partner, including: (a) Worldview Technology Partners III, LP, (b) Worldview Technology International III, LP, (c) Worldview Strategy III,

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LP, (d) Worldview III Carrier Fund, LP, (e) Worldview Technology Partners IV, LP, (f) Worldview Technology International IV, LP, and (g) Worldview Strategic Partners IV, LP. Mr. Wei disclaims beneficial ownership of such shares.

- (8) Includes 59,963,367 shares held by entities affiliated with Worldview Technology Partners, of which Mr. Wei is a general partner, including: (a) Worldview Technology Partners III, LP, (b) Worldview Technology International III, LP, (c) Worldview Strategy III, LP, (d) Worldview III Carrier Fund, LP, (e) Worldview Technology Partners IV, LP, (f) Worldview Technology International IV, LP, and (g) Worldview Strategic Partners IV, LP. Mr. Wei disclaims beneficial ownership of such shares.
- (9) Includes 2,028,850 shares of preferred stock held by: Oak Investment Partners IX, LP, Oak IX Affiliates Fund, LP, and Oak IX Affiliates (Annex), LP. Mr. Glassmeyer disclaims beneficial ownership of such shares.
- (10) Includes 60,762,677 shares of preferred stock held by: Oak Investment Partners IX, LP, Oak IX Affiliates Fund, LP, and Oak IX Affiliates (Annex), LP. Mr. Glassmeyer disclaims beneficial ownership of such shares.
- (11) Common shares include 14,280 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of May 31, 2003.
- (12) Common shares include 15,078 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of May 31, 2003.
- (13) See footnotes (1) through (10) above. Consists of David Schaeffer, H. Helen Lee, Mark Schleifer, Robert Beury, Erel Margalit, James Wei, Edward Glassmeyer, R. Brad Kummer, Timothy O'Neill, Bruce Wagner and Thaddeus Weed.

CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION

You should read this Information Statement together with the financial statements and related notes and other information accompanying this Information Statement. The results discussed therein are not necessarily indicative of the results to be expected in any future periods. Certain matters discussed therein are forward-looking statements. This Information Statement may contain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenues or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any

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statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "continue," "believe," "expect" or "anticipate" and other similar words. Such forward-looking statements may be contained in "Management's Discussion and Analysis of Financial Condition and Results of Operations," (attached to this Information Statement in Appendix G) among other places.

Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties. Key risks to our Company are described in our annual report for the year ended December 31, 2002 on Form 10-K filed with the Securities and Exchange Commission. We do not intend, and undertake no obligation, to update any forward-looking statement.

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FINANCIAL INFORMATION REGARDING THE COMPANY

Financial Statements

The Company's audited balance sheets as of December 31, 2002 and 2001 audited statements of operations, statements of stockholders' equity and statements of cash flows for the years ended 2002, 2001 and 2000 and related notes to the financial statements are attached to this Information Statement in Appendix F (the "Audited Financial Statements").

The Company's unaudited condensed consolidated balance sheet as of March 31, 2003 and unaudited condensed consolidated statements of operations, and condensed consolidated statements of cash flows and related notes to the condensed consolidated financial statements for the three months ended March 31, 2003 and 2002 (the "Unaudited Financial Statements") are also attached to this Information Statement in Appendix F.

Also included in this Information Statement is an unaudited pro forma consolidated balance sheet as of March 31, 2003 and unaudited pro forma consolidated statements of operations for the twelve months ending December 31, 2002 and three months ending March 31, 2003 and the related notes to the unaudited pro forma consolidated balance sheet and the unaudited pro forma consolidated statements of operations (the "Pro Forma Financial Statements"). The Pro Forma Financial Statements give effect to the conversion of the Existing Preferred Stock, the receipt by the Company of \$41 million in cash in connection with the sale of the Investors Preferred Stock, the Company's issuance of 11,000 shares of Series F Preferred Stock and 41,000 shares of Investors Preferred, which will be issued to the Investors and Cisco Capital upon the consummation of the transactions contemplated by the Exchange Agreement and the Purchase Agreement, the cancellation of \$262.8 in principal amount of, and the related accrued interest on, the notes issued pursuant to the credit facility with Cisco Capital, the cancellation of the Cisco Warrants, the issuance of the Amended and Restated Cisco Note and the payment of approximately \$20 million in cash.

Supplementary Financial Information

The following tables present unaudited quarterly financial information for the nine quarters ended March 31, 2003. The Company believes this information reflects all adjustments (consisting only of normal recurring adjustments) that it considers necessary for a fair presentation of such information in

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accordance with generally accepted accounting principles. The results for any quarter are not necessarily indicative of results for any future period (in thousands, except per share data):

	Year-Ending December 31, 2003				
	1 st Quarter				
Net Revenue	\$		14,233		
Operating loss	\$		(14,880)		
Net income	\$		1,914		
Net income applicable to common stock	\$		1,924		
Basic net income per common share	\$		0.55		
Diluted net income per common share	\$		0.14		
Basic weighted average number of shares outstanding			3,483,838		
Diluted weighted average number of shares outstanding			13,845,149		
	Year-Ended December 31, 2002				
	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	
Net Revenue	\$	3,542	\$ 18,578	\$ 15,960	\$ 13,833
Operating loss	\$	(16,684)	\$ (15,523)	\$ (16,875)	\$ (13,191)
Extraordinary gain	\$	4,528	\$	\$	\$ 3,915
Net loss	\$	(17,959)	\$ (24,562)	\$ (25,409)	\$ (23,913)
Net loss applicable to common stock	\$	(17,959)	\$ (24,562)	\$ (25,409)	\$ (23,913)

Year-Ended December 31, 2002

Net loss per share before extraordinary gain	\$ (8.52)	\$ (7.18)	\$ (7.34)	\$ (19.63)
Extraordinary gain per share	\$ 1.72	\$	\$	\$ 2.76
Basic and diluted net loss per common share	\$ (6.81)	\$ (7.18)	\$ (7.34)	\$ (16.87)
Weighted average number of shares outstanding	2,637,951	3,419,582	3,463,995	1,417,522

Year-Ended December 31, 2001

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Net Revenue	\$	\$ 90	\$ 657	\$ 2,271
Operating loss	\$ (12,975)	\$ (14,527)	\$ (14,935)	\$ (18,657)
Net loss	\$ (12,794)	\$ (15,188)	\$ (17,448)	\$ (21,483)
Net loss applicable to common stock	\$ (12,794)	\$ (15,188)	\$ (17,448)	\$ (45,651)
Basic and diluted net loss per common share	\$ (9.12)	\$ (10.81)	\$ (12.39)	\$ (32.20)
Weighted average number of shares outstanding	1,402,798	1,404,587	1,408,614	1,417,522

Management's Discussion and Analysis of Financial Condition and Results of Operations

Attached to this Information Statement in Appendix G is management's discussion and analysis of the Company's financial condition, changes in financial condition and results of operations for each of the fiscal years and interim periods covered by the Audited Financial Statements and the Unaudited Financial Statements. We encourage you to read the full text of Appendix G to gain a better understanding of the Company's historical financial statements.

Quantitative and Qualitative Disclosures About Market Risk

All of our financial interests that are sensitive to market risk are entered into for purposes other than trading. Our primary market risk exposure is related to our marketable securities and credit facility. We place our marketable securities investments in instruments that meet high credit quality standards as specified in our investment policy guidelines. Marketable securities were approximately

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\$21.4 million at March 31, 2003, \$12.7 million of which are considered cash equivalents and mature in 90 days or less, \$4.4 million are short-term investments consisting of certificates of deposit and \$4.3 million are deposits and other long-term assets and consist of commercial paper (\$ 1.0 million) and a Canadian treasury bill (\$ 3.3 million). Approximately \$5.5 million of these investments are restricted for collateral against letters of credit totaling \$5.6 million.

The Company's credit facility provides for secured borrowings at the 90-day London Interbank Offered Rate plus a specified margin based upon our leverage ratio. The interest rate resets on a quarterly basis and was a weighted average of 6.5% as of March 31, 2003. Interest payments are deferred and begin in 2005. As described elsewhere in this Information Statement, we have violated the debt covenants under the credit facility and are in default under the credit facility. As described in Proposal 2, the Company anticipates that it will enter into an agreement with Cisco Capital to restructure the indebtedness under the credit facility and to enter into an Amended and Restated Credit Agreement pursuant to which the Company will issue the Amended and Restated Cisco Note to Cisco Capital. Unless the Company defaults under the Amended and Restated Credit Agreement, interest accrual under the Amended and Restated Cisco Note will not commence until 30 months after its issuance, and no interest payment is due until 42 months after its issuance.

If market rates were to increase immediately and uniformly by 10% from the level at March 31, 2003, the change to the Company's interest sensitive assets and liabilities would have an immaterial effect on our financial position, results of operations and cash flows over the next fiscal year. A 10% increase in the weighted-average interest rate for the three-month period ended March 31, 2003 would have increased interest expense for the period by approximately \$0.4 million.

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The following unaudited pro forma consolidated financial statements and explanatory notes have been prepared to give effect to the consummation of the transactions contemplated by the Exchange Agreement and the Purchase Agreement described in Proposal No. 2.

In accordance with Article 11 of Regulation S-X under the Securities Act, unaudited pro forma financial statements as of March 31, 2003, and for the three months ended March 31, 2003, and the year ended December 31, 2002, have been prepared to reflect, for accounting purposes, the exchange of cash and Series F Preferred stock and the Amended and Restated Cisco Note for the amount outstanding under the Facility and outstanding Cisco Warrants and the issuance of the Investors Preferred Stock for cash and the conversion to Common Stock of the Existing Preferred Stock.

The following pro forma financial statements have been prepared based upon the historical financial statements of the Company. The pro forma financial statements should be read in conjunction with the historical consolidated financial statements of the Company as of December 31, 2002 and 2001, for the years ended December 31, 2002, 2001 and 2000, and the unaudited condensed consolidated financial statements as of March 31, 2003, and for the three month period ended March 31, 2003, included in this Information Statement.

The pro forma statements of operations assume that the transactions contemplated by the Exchange Agreement and Purchase Agreement were consummated on January 1, 2002. The pro forma balance sheet assumes that the transactions contemplated by the Exchange Agreement and Purchase Agreement were consummated on March 31, 2003. The pro forma financial statements are provided for illustrative purposes only, and are not necessarily indicative of the operating results that would have occurred if this transaction had been consummated at the beginning of the periods indicated, nor are they necessarily indicative of any future operating results.

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Cogent Communications Group, Inc. and Subsidiaries
Unaudited Pro Forma Consolidated Balance Sheet
As of March 31, 2003
(in thousands, except share amounts)

ASSETS	Historical Cogent	Pro Forma Adjustments	Pro Forma Cogent
Current assets:			
Cash and cash equivalents	\$ 12,739	\$ 20,050 (a)	\$ 32,789
Short term investments	4,398		4,398
Accounts receivable, net	5,546		5,546
Prepaid expenses and other current assets	5,667		5,667
Total current assets	28,350		48,400
Property and Equipment:			
Property and equipment	381,507		381,507
Accumulated depreciation	(52,820)		(52,820)
Total Property and Equipment	328,687		328,687
Other assets			
	18,531	(12,698)(b)	5,833
Intangible assets	26,080		26,080
Accumulated amortization	(10,956)		(10,956)
Total intangible assets, net	15,124		15,124
Total assets	\$ 390,692		\$ 398,044

ASSETS	Historical Cogent	Pro Forma Adjustments	Pro Forma Cogent
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current Liabilities:			
Accounts payable	\$ 7,500		\$ 7,500
Accrued & other	11,458	\$ (50)(c)	11,408
Cisco credit facility	262,709	(262,709)(d)	
Capital leases - current portion	3,683		3,683
	<u>285,350</u>		<u>22,591</u>
Total current liabilities	285,350		22,591
Long Term Liabilities:			
Cisco note payable, net of discount of \$2,353		14,647 (e)	14,647
Convertible Notes - Allied Riser, net of discount of \$6,649	3,542		3,542
Capital leases	56,262		56,262
Other long term liabilities	1,363		1,363
	<u>346,517</u>		<u>98,405</u>
Total liabilities	346,517		98,405
Stockholders' Equity:			
Convertible preferred stock, Series A, \$0.001 par value: 26,000,000 shares authorized, issued and outstanding; liquidation preference of \$30,484 at March 31, 2003; none on a pro-forma basis	25,892	(25,892)(f)	
Convertible preferred stock, Series B, \$0.001 par value: 20,000,000 shares authorized, 19,362,531 shares issued and outstanding; liquidation preference of \$100,396 at March 31, 2003; none on a pro-forma basis	87,974	(87,974)(f)	
Convertible preferred stock, Series C, \$0.001 par value: 52,173,643 shares authorized, 49,773,402 shares issued and outstanding; liquidation preference of \$100,000 at March 31, 2003; none on a pro-forma basis	61,345	(61,345)(f)	
	<u>175,211</u>		
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Convertible preferred stock, Series D, \$0.001 par value: 3,426,293 shares authorized, issued and outstanding; liquidation preference of \$6,884 at March 31, 2003; none on a pro forma basis	4,272	(4,272)(f)	
Convertible preferred stock, Series E, \$0.001 par value: 3,426,293 shares authorized, issued and outstanding; liquidation preference of \$4,282 at March 31, 2003; none on a pro forma basis	4,272	(4,272)(f)	
Convertible preferred stock, Series F, \$0.001 par value: 11,000 shares authorized, issued and outstanding; liquidation preference of \$11,000 on a pro forma basis		11,000(g)	11,000
Convertible preferred stock, Series G, \$0.001 par value: 41,000 shares authorized, issued and outstanding; liquidation preference of \$123,000 on a pro forma basis		40,675(h)	40,675
Common stock, \$0.001 par value, 21,100,000 shares authorized, 3,483,838 shares issued and outstanding at March 31, 2003; 395,000,000 shares authorized, 14,259,563 shares issued and outstanding on a pro forma basis	4	11 (f)	15
Additional paid-in capital	48,974	183,744 (f)	856,096
		623,378 (k)	
Deferred compensation	(4,893)		(4,893)
Stock purchase warrants	9,012	(8,248)(i)	764
Currency translation	176		176
Accumulated deficit	(192,853)	212,037 (j)	(604,194)

(623,387)(k)

Total shareholders equity	44,175	299,639
Total liabilities & shareholders equity	\$ 390,692	\$ 398,044

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**NOTES TO THE UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET
AS OF MARCH 31, 2003**

- (a) Represents the cash payment of \$20 million to Cisco Capital under the Exchange Agreement and the net proceeds of \$40.7 million from the sale of preferred stock to the Investors under the Purchase Agreement.
- (b) Represents elimination of unamortized debt costs associated with the Facility of \$12.7 million as of March 31, 2003.
- (c) Represents the elimination of accrued interest of \$50,000 under the Facility as of March 31, 2003 as per the Exchange Agreement.
- (d) Represents the elimination of \$262.7 million outstanding under the Facility as of March 31, 2003 as per the Exchange Agreement.
- (e) Represents the issuance of the Amended and Restated Cisco Note with a face amount of \$17.0 million net of the discount of \$2.4 million. The Amended and Restated Cisco Note begins to accrue interest on the thirty first month after issuance, and as a result is discounted using an interest rate of ninety day LIBOR plus 4.5% (5.78% as of March 31, 2003) for the non-interest bearing period.
- (f) Represents the conversion and retirement of the Company's existing preferred stock into common stock under the Third Amended and Restated Certificate of Incorporation of the Company pursuant to the Purchase Agreement. The Company's existing preferred stock converts into a total of 10,775,725 shares of \$0.001 par value common stock. This results in an elimination of the book values of the Series A, Series B, Series C, Series D and Series E preferred stock and a corresponding increase to common stock of \$11,000 and an increase to additional paid in capital of \$183.7 million. The Company's existing preferred stock converts into common stock as follows:

Existing Preferred	Shares outstanding	Conversion Ratio	Common Conversion
Series A	26,000,000	0.10000	2,600,000
Series B	19,362,531	0.12979	2,513,126
Series C	49,773,402	0.10000	4,977,340
Series D	3,426,293	0.10000	342,629
Series E	3,426,293	0.10000	342,629
TOTAL	101,988,519		10,775,725

- (g) Represents the issuance of 11,000 shares of Series F Preferred Stock to Cisco Capital under the Exchange Agreement.
- (h)

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Represents the issuance of 41,000 shares of Series G Preferred Stock to the Investors for net proceeds of \$40.7 million.

- (i) Represents the return of warrants issued to Cisco Capital under the Exchange Agreement carried at \$8.3 million on the Company's March 31, 2003 balance sheet.

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- (j) Represents the gain resulting from the retirement of \$262.7 million outstanding under the Facility under the Exchange Agreement determined as follows (in thousands):

	Amount as of March 31, 2003
Cash paid	\$ 20,000
Issuance of Series F Preferred Stock	11,000
Amended and Restated Cisco Note, net of discount	14,647
Estimated transaction costs	625
	46,272
Total Consideration	\$ 46,272
	(262,709)
Amount outstanding under Facility	(262,709)
Interest accrued under the Facility	(50)
Book value of retired warrants	(8,248)
Book value of unamortized Facility loan costs	12,698
	(212,037)
Gain from Exchange Agreement	(212,037)

Under Section 108(a)(1)(B) of the Internal Revenue Code of 1986 gross income does not include any amount that would be includible in gross income by reason of the discharge of indebtedness to the extent that a non-bankrupt taxpayer is insolvent. Under Section 108(a)(1)(B) the Company believes that the gain for income tax purposes will not result in taxable income.

- (k) Represents a non-cash beneficial conversion charge of \$623.4 million determined by using the difference between the closing price of Cogent's common stock of \$2.09 per share at June 18, 2003 and the Series F and Series G conversion rates times the number of common shares resulting from the conversion of the Series F and Series G preferred stock. The Series G Preferred Stock includes several sub-series with different common stock conversion rates. This amount will ultimately be measured and will be recorded when these transactions close using the difference between the Series F and Series G conversion rates and the closing trading price of Cogent's common stock on the closing date. This amount is reflected as a reduction to retained earnings and an increase to additional paid-in capital.

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Cogent Communications Group, Inc. and Subsidiaries
Unaudited Pro forma consolidated Statement of Operations
For the Year Ended December 31, 2002
(in thousands, except share and per share amounts)

Historical Cogent	Pro Forma	Pro Forma Cogent
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		Adjustments	
Net service revenue	\$ 51,913		\$ 51,913
Operating expenses:			
Network operations (including \$233 of amortization of deferred compensation)	49,324		49,324
Selling, general and administrative (including \$3,098 of amortization of deferred compensation)	36,593		36,593
Gain on settlement of vendor litigation	(5,721)		(5,721)
Depreciation and amortization	33,990		33,990
Total operating expenses	114,186		114,186
Operating loss	(62,273)		(62,273)
Settlement of note holder litigation	(3,468)		(3,468)
Interest income and other	1,739		1,739
Interest expense	(36,284)	15,804(a)	(20,480)
Loss before extraordinary item	\$ (100,286)		\$ (84,482)
Extraordinary gain Allied Riser merger	8,443		8,443
Net loss	\$ (91,843)		\$ (76,039)
Net loss per common share basic and diluted			
Loss applicable to common stock before extraordinary gain	\$ (30.82)		\$ (6.02)
Extraordinary gain	2.59		0.60
Basic net loss per common share	\$ (28.22)		\$ (5.42)
Weighted average common shares basic and diluted	3,254,241	10,775,725(b)	14,029,966

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**NOTES TO THE UNAUDITED PRO FORMA
CONSOLIDATED STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2002**

- (a) Represents the elimination of interest expense of \$16.7 million under the Facility and the addition of interest expense of \$0.9 million from the amortization of the discount under the Amended and Restated Cisco Note.
- (b) Represents the additional shares of common stock outstanding due to the conversion of the Company's existing preferred stock under the Purchase Agreement. The Company's existing preferred stock converts into common stock as follows:

Existing Preferred	Shares outstanding	Conversion Ratio	Common Conversion
Series A	26,000,000	0.10000	2,600,000
Series B	19,362,531	0.12979	2,513,126
Series C	49,773,402	0.10000	4,977,340
Series D	3,426,293	0.10000	342,629
Series E	3,426,293	0.10000	342,629
TOTAL	101,988,519		10,775,725

The dilutive impact of the potential conversion of the Series F and Series G preferred stock was not included in the computation of diluted earnings per share due to its anti-dilutive effect.

Cogent Communications Group, Inc. and Subsidiaries
Unaudited Pro forma consolidated Statement of Operations
For the Three Months Ended March 31, 2003
(in thousands, except share and per share amounts)

	Historical Cogent	Pro Forma Adjustments	Pro Forma Cogent
Net service revenue	\$ 14,233		\$ 14,233
Operating expenses:			
Network operations (including \$57 of amortization of deferred compensation)	10,739		10,739
Selling, general and administrative (including \$761 of amortization of deferred compensation)	7,163		7,163
Depreciation and amortization	11,211		11,211
Total operating expenses	29,113		29,113
Operating loss	(14,880)		(14,880)
Gain Allied Riser note exchange	24,802		24,802
Interest income and other	398		398
Interest expense	(8,406)	4,809(a)	(3,597)
Net income	\$ 1,914		\$ 6,723
Basic net income per common share	\$ 0.55		\$ 0.47
Diluted net income per common share	\$ 0.14		\$ 0.02

	Historical Cogent	Pro Forma Adjustments	Pro Forma Cogent
	<u> </u>	<u> </u>	<u> </u>
Weighted average common shares basic	3,483,838	10,775,725(b)	14,259,563
Weighted average common shares diluted	13,845,149	323,642,311(c)	337,487,460
	<u> </u>		<u> </u>
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**NOTES TO THE UNAUDITED PRO FORMA
CONSOLIDATED STATEMENT OF OPERATIONS
FOR THE THREE MONTHS ENDED MARCH 31, 2003**

- (a) Represents the elimination of interest expense of \$5.0 million under the Facility and the addition of interest expense of \$0.2 million from the amortization of the discount under the Amended and Restated Cisco Note.
- (b) Represents the additional shares of common stock outstanding due to the conversion of the Company's existing preferred stock under the Purchase Agreement. The Company's existing preferred stock converts into common stock as follows:

Existing Preferred	Shares outstanding	Conversion Ratio	Common Conversion
	<u> </u>	<u> </u>	<u> </u>
Series A	26,000,000	0.10000	2,600,000
Series B	19,362,531	0.12979	2,513,126
Series C	49,773,402	0.10000	4,977,340
Series D	3,426,293	0.10000	342,629
Series E	3,426,293	0.10000	342,629
	<u> </u>		<u> </u>
TOTAL	101,988,519		10,775,725
	<u> </u>		<u> </u>

- (c) Represents the dilutive impact of 323,147,402 common shares due to the potential conversion of the Series F and Series G preferred stock into common stock and the additional dilutive impact of 494,909 common shares due to considering the Company's Series D and Series E preferred stock as outstanding and converted into common stock as of the beginning of the period. The Series F preferred stock is convertible into 68,199,901 shares of common stock and the Series G preferred stock is convertible into 254,947,501 shares of common stock.

David Schaeffer, Chairman and Chief Executive Officer

Dated: June 30, 2003
Washington, D.C.

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Appendix A

**FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
COGENT COMMUNICATIONS GROUP, INC.**

**Pursuant to Sections 228, 242 and 245 of the
General Corporation Law of the State of Delaware**

(Originally incorporated under the same name on December 12, 2000)

Cogent Communications Group, Inc., (the "Corporation"), a corporation organized and existing under, and by virtue, of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY AS FOLLOWS:

1. That the name of the Corporation is Cogent Communications Group, Inc.
2. That on May, 2003 the Board of Directors duly adopted resolutions proposing to amend and restate the certificate of incorporation of this Corporation, declaring said amendment and restatement to be advisable and in the best interests of this Corporation and its stockholders, and authorizing the appropriate officers of this Corporation to solicit the approval of the stockholders therefor.
3. That in lieu of a meeting and vote of stockholders, consents in writing have been signed by holders of outstanding stock having not less than the minimum number of votes that is necessary to consent to this amendment and restatement, and, if required, prompt notice of such action shall be given in accordance with the provisions of Section 228 of the General Corporation Law.
4. This Fourth Amended and Restated Certificate of Incorporation restates and integrates and further amends the certificate of incorporation of the Corporation, as heretofore amended or supplemented.

The text of the Corporation's certificate of incorporation is amended and restated in its entirety as follows:

ARTICLE 1. NAME.

The name of the Corporation is Cogent Communications Group, Inc.

ARTICLE 2. REGISTERED OFFICE AND AGENT.

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, in the County of New Castle, 19808, Delaware. The name of its registered agent at such address is the Corporation Corporation.

ARTICLE 3. PURPOSE.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE 4. CAPITAL STOCK.

A. Authorized Shares. The total number of shares of capital stock of all classes that the Corporation will have the authority to issue is three hundred ninety-five million one hundred twenty thousand (395,120,000) shares, of which: (i) three hundred ninety-five million (395,000,000) shares, of a par value of \$.001 per share, shall be of a class designated "Common Stock"; and (ii) one hundred

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twenty thousand (120,000) shares, of a par value of \$.001 per share, of authorized but unissued Preferred Stock.

The authorized but unissued Preferred Stock may be issued in one or more additional series, each series to be appropriately designated by a distinguishing letter or title prior to the issue of any shares thereof. The Board of Directors is hereby authorized to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption including sinking fund provisions, if any, the redemption price or prices, the liquidation preferences, any other qualifications, limitations, or restrictions thereof, of any wholly unissued series of Preferred Stock, and the number of shares constituting any such unissued series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

Except as otherwise set forth in a certificate designating any currently authorized but unissued Preferred Stock (each such certificate, a "Certificate of Designation"), the designations, preferences, privileges and powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the Preferred Stock and the Common Stock shall be as follows:

B. Preferred Stock. Except as otherwise required by the General Corporation Law or as provided in the Certificate of Designation relating to such series of Preferred Stock, shares of Preferred Stock shall be voted together with the shares of the Common Stock without distinction as to class or series at each annual or special meeting of stockholders of the Corporation, and may act by written consent in the same manner as the Common Stock, upon the following basis: each holder of a share of Preferred Stock will be entitled to one vote for each share of Common Stock such holder of Preferred Stock would receive upon conversion of such share of Preferred Stock held by such stockholder into Common Stock. Such determination shall be made with (1) respect to a meeting of the stockholders of the Corporation on the record date fixed for meeting, or (2) with respect to a written consent of the stockholders of the Corporation, on the effective date of such written consent.

C. Common Stock.

1. Prior Rights of Preferred Stock. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock and any other series of preferred stock as may be issued in accordance with the provisions hereof.

2. Voting Rights. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders. There shall be no cumulative voting.

3. Dividends. Subject to the rights of any series of preferred stock set forth in a certificate of designation, dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding preferred stock.

4. Increases or Decreases. Subject to the rights of any series of preferred stock set forth in a certificate of designation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding or reserved for conversion of the outstanding Preferred Stock) by the affirmative vote of the holders of a majority of the outstanding stock of the Corporation (voting together on an as-if converted basis).

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ARTICLE 5. COMPROMISE OR ARRANGEMENT WITH CREDITORS.

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application had been made, be binding on all the creditors or class of creditor, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE 6. DIRECTORS LIABILITY; INDEMNIFICATION.

A. Indemnification. The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law, as the same may be amended and supplemented from time to time, indemnify and advance expenses to, (i) its directors and officers, and (ii) any person who, at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section as amended or supplemented (or any successor), for actions taken in such person's capacity as such a director, officer, employee or agent, and then only to the extent such person is not indemnified for such actions by such other corporation, partnership, joint venture, trust or other enterprise; provided, however, that except with respect to proceedings to enforce rights to indemnification, the by-laws of the Corporation may provide that the Corporation shall indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and condition and to the extent determined by the Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

B. Limitation of Liability. No director of this Corporation shall be personally liable to the Corporation or its stockholders for any monetary damages for breaches of fiduciary duty as a director, notwithstanding any provision of law imposing such liability; provided that this provision shall not eliminate or limit the liability of a director, to the extent that such liability is imposed by applicable law, (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law (iii) under Section 174 or successor provisions of the General Corporation Law; or (iv) for any transaction from which the director derived an improper personal benefit. This provision shall not eliminate or limit the liability of a director for any act or omission if such elimination or limitation is

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prohibited by the General Corporation Law. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

C. Prospective Amendment. Any repeal or modification of this Article 6 shall be prospective and shall not affect the rights under this Article 6 in effect at the time of the alleged occurrence of any act or Omission to act giving rise to liability or indemnification.

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Executed in the name of the Corporation by its President, who declares, affirms, acknowledges and certifies under penalties of perjury, that this is his free act and deed and the facts stated herein are true.

Dated: _____, 2003

COGENT COMMUNICATIONS GROUP, INC.

David Schaeffer
President

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Appendix B

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS
AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS**

OF

SERIES F PARTICIPATING CONVERTIBLE PREFERRED STOCK

OF

COGENT COMMUNICATIONS GROUP, INC.

**Pursuant to Section 151 of the
General Corporation Law of the State of Delaware**

Cogent Communications Group, Inc., a Delaware corporation (the "Corporation"), hereby certifies that, pursuant to the authority contained in Article IV of its Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board"), by unanimous written consent dated June 10, 2003 duly adopted the following resolution, which resolution remains in full force and effect as of the date hereof:

RESOLVED, that pursuant to the authority vested in the Board and in accordance with the provisions set forth in Article IV of its Certificate of Incorporation, there is hereby established a series of authorized preferred stock of the Corporation having a par value of \$0.001 per share, which series shall (i) be designated as "Series F Participating Convertible Preferred Stock" (the "Series F Preferred Stock"), (ii) consist of eleven thousand (11,000) shares and (iii) have the following voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof:

1. Certain Definitions.

Unless the context otherwise requires, the terms defined in this Section 1 shall have, for all purposes of this resolution, the meanings herein specified.

"Common Stock" shall mean the common stock, par value \$0.001 per share, of the Corporation.

"Junior Stock Primary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking junior to the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Primary Liquidation Preference (as defined herein), to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable, including but not limited to the Series H Participating Convertible Preferred Stock with respect to its Series H Primary Liquidation Preference and the Series G Participating Convertible Preferred Stock with respect to its Series G Secondary Liquidation Preference.

"Junior Stock Secondary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking junior to the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Secondary Liquidation Preference (as defined herein), to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable.

"Junior Stock" shall mean the Junior Stock Primary and the Junior Stock-Secondary, collectively.

"Pari Passu Stock Primary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking *pari passu* with the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Primary Liquidation Preference, to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable, including but not limited to the Series G Participating Convertible Preferred Stock with respect to the Series G Primary Liquidation Preference.

"Pari Passu Stock Secondary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking *pari passu* with the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Secondary Liquidation Preference, to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable.

"Pari Passu Stock" shall mean the Pari Passu Stock Primary and the Pari Passu Stock - Secondary, collectively.

"Participating Preferred Stock" shall mean the Series F, G and H Participating Convertible Preferred Stock, par value \$.001 per share, and any other series of Preferred Stock of the Corporation that participates with the Common Stock in liquidation after payment of all liquidation preferences.

"Preferred Stock" shall mean the preferred stock, par value \$.001 per share, of the Corporation, however designated.

"Senior Stock Primary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking senior to the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Primary Liquidation Preference, to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable.

"Senior Stock Secondary" shall mean any class or series of capital stock of the Corporation authorized on or after the Original Issue Date ranking senior to the Series F Preferred Stock in respect of the right to receive dividends or, with respect to the Secondary Liquidation Preference, to participate in any distribution upon liquidation, dissolution or winding-up of the affairs of the Corporation, as applicable, including but not limited to the Series G Participating Convertible Preferred Stock with respect to the Series G Primary Liquidation Preference and the Series G Secondary Liquidation Preference and the Series H Participating Convertible Preferred Stock with respect to the Series H Primary Liquidation Preference.

"Senior Stock" shall mean the Senior Stock Primary and the Senior Stock -Secondary, collectively.

"Series G Adjustment Factor" shall mean the fraction designated as "Series G Controlling Adjustment Factor" in the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of the Series G Participating Convertible Preferred Stock.

"Series G Participating Convertible Preferred Stock" means each sub-series of the Corporation's Series G Participating Convertible Preferred Stock, par value \$.001, which will be issued in an indeterminate number of sub-series (all of which will be identical to one another except for such sub-series' conversion price), collectively.

"Series G Primary Liquidation Preference" shall mean the liquidation proceeds payable to the Series G Participating Convertible Preferred Stock of the Corporation designated as "Primary Liquidation Preference" in the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of the Series G Participating Convertible Preferred Stock.

"Series G Secondary Liquidation Preference" shall mean the liquidation proceeds payable to the Series G Participating Convertible Preferred Stock of the Corporation designated as "Secondary Liquidation Preference" in the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of the Series G Participating Convertible Preferred Stock.

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"Series H Adjustment Factor" shall mean the fraction designated as "Adjustment Factor" in the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of the Series H Participating Convertible Preferred Stock.

"Series H Primary Liquidation Preference" shall mean the liquidation proceeds payable to the Series H Participating Convertible Preferred Stock of the Corporation designated as "Primary Liquidation Preference" in the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of the Series H Participating Convertible Preferred Stock.

2.

Voting.

(a) Except as otherwise required by the General Corporation Law or provided in this Certificate, the shares of Series F Preferred Stock shall be voted together with the shares of the Common Stock without distinction as to class or series at each annual or special meeting of stockholders of the Corporation, and may act by written consent in the same manner as the Common Stock, upon the following basis: each holder of a share of Series F Preferred Stock will be entitled to one vote for each share of Common Stock such holder of Series F Preferred Stock would receive upon conversion of such share of Series F Preferred Stock held by such stockholder into Common Stock. Such determination shall be made (1) with respect to a meeting of the stockholders of the Corporation on the record date fixed for meeting, or (2) with respect to a written consent of the stockholders of the Corporation, on the effective date of such written consent.

(b) Notwithstanding the provisions of Article 2(a) hereof, shares of Series F Preferred Stock shall not be entitled to a vote with respect to the election of directors of the Corporation.

(c) Notwithstanding the provisions of Article 2(a) hereof, the affirmative vote or consent of the holders of at least a majority of the issued and outstanding shares of the Series F Preferred Stock, voting together as a single class shall be required to:

(i) declare or pay dividends on its capital stock (other than dividends payable in Common Stock); or

(ii) amend, repeal or modify any provision of the Certificate of Incorporation or Bylaws in a manner that adversely affects the rights, powers or preferences of the Series F Preferred Stock.

3.

Preferences on Liquidation, Dissolution etc.

(a) Liquidation Preference.

(i) Upon any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, after payment of all amounts owing to holders of any Senior Stock Primary, the holders of outstanding shares of the Series F Preferred Stock will be entitled to receive, out of the assets of the Corporation remaining after all of the Corporation's debts and liabilities have been paid or otherwise provided for, but before any payments have been made to the holders of Common Stock, the Series G Participating Convertible Preferred Stock with respect to its Series G Secondary Liquidation Preference, the Series H Participating Convertible Preferred Stock with respect to its Series H Primary Liquidation Preference, or any other Junior Stock Primary or Pari-Passu Stock Secondary, an amount equal to \$1,000 per share, subject to appropriate

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adjustment for stock splits, stock dividends, recapitalizations, reclassifications and similar events which increase or decrease the number of outstanding shares of Series F Preferred Stock (the "Primary Liquidation Preference"). If upon any such dissolution, liquidation, or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation available to be distributed as aforesaid among the holders of the Series F Preferred Stock, the Series G Participating Convertible Preferred Stock and any other Pari Passu Stock Primary shall be insufficient to permit the payment in full to them of the Primary Liquidation Preference, the Series G Primary Liquidation Preference and any other liquidation preferences ranking pari passu therewith and owing with respect to any other Pari Passu Stock Primary, then the entire assets of the Corporation so to be distributed shall be distributed ratably based upon their respective pari passu liquidation preferences among such holders of the Series F Preferred Stock, the Series G Participating Convertible Preferred Stock and any other Pari Passu Stock Primary.

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(ii) Upon any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, after payment of the Primary Liquidation Preference, the Series G Primary and Secondary Liquidation Preferences, the Series H Primary Liquidation Preference, and any other amounts owing to holders of any other Pari Passu Stock Primary and Senior Stock Secondary, the holders of outstanding shares of Series F Preferred Stock will be entitled to receive, out of the assets of the Corporation remaining after all of the Corporation's debts and liabilities have been paid or otherwise provided for, but before any payments have been made to the holders of Common Stock or any Junior Stock Secondary, an amount equal to \$1,647.0883 per share, subject to appropriate adjustment for stock splits, stock dividends, recapitalizations, reclassifications and similar events which increase or decrease the number of outstanding shares of Series F Preferred Stock (the "Secondary Liquidation Preference" and together with the Primary Liquidation Preference, the "Liquidation Preferences"). If upon any such dissolution, liquidation, or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation available to be distributed as aforesaid among the holders of the Series F Preferred Stock and any Pari Passu Stock Secondary shall be insufficient to permit the payment in full to them of their respective pari passu liquidation preferences, then the entire assets of the Corporation so to be distributed shall be distributed ratably based upon their respective pari passu liquidation preferences among such holders of the Series F Preferred Stock and the Pari Passu Stock Secondary.

(b) Remaining Liquidating Distributions. After payment has been made in full to the holders of Series F Preferred Stock, the Senior Stock, the Pari Passu Stock and any Junior Stock of their liquidation preferences, all remaining assets of the Corporation available for distribution shall be distributed ratably to the holders of the Participating Preferred Stock and the holders of the Common Stock, assuming for purposes of such calculation that all outstanding shares of Participating Preferred Stock are converted into shares of Common Stock at their then applicable conversion rates.

(c) Assets other than Cash. If assets other than cash are to be distributed to any holders of Series F Preferred Stock or Common Stock pursuant to Article 3 hereof, the amount received by such holders upon receipt of those assets shall be deemed to be the fair market value of such assets as determined in good faith by the Board of Directors of the Corporation in accordance with sound financial practice. If shares of stock or other securities are distributed to any holders of Series F Preferred Stock or Common Stock pursuant to Article 3 hereof, the fair market value shall mean per share or unit of such security, at any date, the average of the daily market prices for the twenty trading business days ending on the second trading day immediately preceding the date of distribution. The market price for each such business day shall be the last sales price on such day as reported on the consolidated transaction reporting system for the principal securities exchange on which the shares of stock or other securities being distributed pursuant to Article 3 hereof is then listed or admitted to trading (or, if applicable, the last sale price reported by the National Association of Securities Dealers

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Automated Quotation Service ("NASDAQ") National Market System), or, if no sale takes place on such day on any such exchange or no such sale is quoted on such system, the average of the closing bid and asked prices on such day as so reported, or, if such securities are not then listed or admitted to trading on any stock exchange, the market price for each such business day shall be the average of the reported closing bid and asked prices on such day in the over-the-counter market, as reported by NASDAQ. If no market prices are reported, then the market price shall be the fair market value as determined in good faith by the Board of Directors. If such securities are subject to an agreement or other restriction limiting their free marketability, the loss of that marketability shall be considered by the Board of Directors in making its determination of fair market value.

(d) Amount Payable in Mergers, etc. The following events shall be treated as a liquidation, dissolution or winding up within the meaning of this Article 3: (i) a consolidation, merger or reorganization of the Corporation with or into any other corporation or corporations in which the stockholders of the Corporation immediately before such event shall own fifty percent (50%) or less (calculated on an as converted basis, fully diluted) of the voting securities of the surviving corporation, (ii) any transaction or series of related transactions in which at least fifty percent (50%) of the Corporation's voting power is transferred, (iii) the sale, transfer or lease of all or substantially all of the assets of the Corporation or (iv) any acquisition of shares of capital stock of the Corporation (whether through a direct issuance by the Company, negotiated stock purchase, a tender for such shares, merger, consolidation or otherwise) by any party or group that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase, the effect of which is that such party or group beneficially owns at least a majority of such voting power immediately after such event (each a "Change of Control Transaction"). All consideration payable to the stockholders of the Corporation in connection with any such Change of Control Transaction, or all consideration payable to the Corporation and distributable to its stockholders, together with all other available assets of the Corporation (net of obligations owed by the Corporation that are senior to the Series F Preferred Stock), in connection with any such Change of Control Transaction, shall be, as applicable, paid by the purchaser to the holders of, or distributed by the Corporation in redemption (out of funds legally available therefor) of, the Series F Preferred Stock, the Pari Passu Stock and any Junior Stock in accordance with the preferences and priorities set forth in Articles 3(a) and 3(b) above, with such preferences and priorities specifically intended to be applicable in any such Change of Control Transaction as if such transaction were a liquidation, dissolution or winding up within the meaning of this Article 3. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of this Article 3(d), including causing the definitive agreement relating to such Change of Control Transaction to provide for a rate at which the shares of Series F Preferred Stock are

converted into or exchanged for cash, new securities or other property that gives effect to the provisions of this Article 3, or otherwise causing such shares to be redeemed in a manner consistent with the provisions of this Article 3. The amount deemed distributed to the holders of Series F Preferred Stock upon any such transaction shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity, as applicable. The provisions of this Article 3(d) shall not apply to any reorganization, merger or consolidation involving (1) only a change in the state of incorporation of the Corporation or (2) a merger of the Corporation with or into a wholly-owned subsidiary of the Corporation which is incorporated in the United States of America which does not change the rights, privileges or preferences or the relative proportions of the stockholders as to each other as to before such event.

(e) Election to Convert. Notwithstanding anything contained herein to the contrary, a holder of shares of Series F Preferred Stock may elect to convert any or all of such shares of Series F Preferred Stock into Common Stock at any time prior to close of business of the Company on the date prior to the day on which any liquidation preference provided for in this Article 3 is to be paid. Any such

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conversion shall be at the then Applicable Conversion Rate and on the other terms and conditions set forth in Article 4 below.

4. Conversion Rights. Conversion of the Series F Preferred Stock into shares of Common Stock shall be subject to the following provisions:

(a) Optional Conversion. Subject to and in compliance with the provisions of this Article 4, any shares of Series F Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series F Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the "Conversion Rate" then in effect (determined as provided in Article 4(b)) by the number of shares of Series F Preferred Stock being converted.

(b) Conversion Rates. The conversion rate in effect at any time for conversion of the Series F Preferred Stock (the "Conversion Rate") shall be the quotient obtained by dividing \$1,000 by the "Conversion Price," calculated as provided in Article 4(c).

(c) Applicable Conversion Prices. The Conversion Price shall initially be \$.161291 (the "Conversion Price"). The initial Conversion Price shall be adjusted from time to time in accordance with this Article 4. All references to a Conversion Price herein shall mean the Conversion Price as so adjusted.

(d) Mechanics of Conversion. Each holder of Series F Preferred Stock who wishes to convert the same into shares of Common Stock pursuant to this Article 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series F Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series F Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not available therefor, in Common Stock (at the Common Stock's fair market value as determined by the Board of Directors as of the date of such conversion) any declared and unpaid dividends on the shares of Series F Preferred Stock being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series F Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. Upon conversion of only a portion of the number of shares of Series F Preferred Stock represented by a certificate surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series F Preferred Stock representing the unconverted portion of the certificate so surrendered.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date that the first share of the Series F Preferred Stock is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series F Preferred Stock, the Conversion Price in effect immediately before that subdivision with respect to the Series F Preferred Stock shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series F Preferred Stock, the Conversion Price in effect immediately before the combination with respect to the Series F Preferred Stock shall be proportionately increased. Any adjustment under this Article 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

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(f) Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event, unless an equivalent dividend is paid to the holders of the Series F Preferred Stock in respect of such stock, the Conversion Prices that are then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, to the price determined by multiplying each Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this Article 4(f) to reflect the actual payment of such dividend or distribution; and provided further, that if an adjustment has been made to any Conversion Price on the fixing of the record date for a dividend or distribution, no additional adjustment shall be made when such dividend is paid or distribution is made.

(g) Adjustments for Other Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, in each such event, unless an equivalent dividend is paid to the holders of the Series F Preferred Stock in respect of such stock, provision shall be made so that the holders of Series F Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Corporation which they would have received had their shares of Series F Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Article 4 with respect to the rights of the holders of such shares of Series F Preferred Stock or with respect to such other securities by their terms; provided, however, that if such a provision has been made on the fixing of the record date for a dividend or distribution, no additional provision shall be made when such dividend is paid or distribution is made.

(h) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series F Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Article 4), in any such event each holder of shares of Series F Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such Series F Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

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(i) Sale of Shares Below Applicable Conversion Price.

(1) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (i) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than (i) pursuant to a transaction described in Articles 4(e)-(i) above for which adjustment was made as provided in the applicable Article or (ii) the issuance of Common Stock, or options or warrants to purchase Common Stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions, as approved by the two-thirds (2/3rds) of the then sitting members of the Board of Directors, in any event for an Effective Price (as hereinafter defined) less than the then-effective Conversion Price, then in each such case the then existing Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale (or such deemed issuance or sale), to the lesser of (x) a price sufficient to cause the number of shares of Series F Preferred Stock issued on the Original Issue Date to convert into an aggregate number of shares of Common Stock equal to five percent (5%) of the fully diluted Common Stock of the Corporation outstanding, assuming conversion or exercise of all securities convertible or exercisable for Common Stock or (y) a price determined by multiplying the then Conversion Price by a fraction (the "Adjustment Factor") (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration received (as defined in subsection (i)(2)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding and (B) the number

of shares of Common Stock issuable upon conversion of the then outstanding Preferred Stock and the exercise of all outstanding rights, warrants and options to purchase Common Stock or Convertible Securities (as defined below). Notwithstanding the foregoing, if at any time or from time to time after the Original Issue Date, the Corporation adjusts the conversion price of the Series G or Series H Participating Convertible Preferred Stock pursuant to Article 4(i)(1) of the Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights and Qualifications, Limitations and Restrictions of such Preferred Stock, the Conversion Price shall be reduced (in lieu of any applicable adjustment pursuant to the first sentence of this subsection (i)(1)), as of the opening of business on the date of such adjustment, to the smaller of the price calculated pursuant to clause (x) of the first sentence of this subsection (i)(1) and the price determined by multiplying the Conversion Price in effect prior to the applicable issue or sale (or deemed issue or sale) by the smallest of the Adjustment Factor, the Series G Adjustment Factor or the Series H Adjustment Factor, as applicable.

(2) For the purpose of making any adjustment required under this Article 4(i), the "Aggregate Consideration" received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that

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may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(3) For the purpose of the adjustment required under this Article 4(i), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the effective Conversion Price, the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Com